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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Delores J. Mosier

Serial Nos. 74/709,998 and 74/709,999

Andrew W. Levenfeld of Andrew W. Levenfeld & Associates,
Ltd. for Delores J. Mosier.

Mary E. Crawford, Trademark Examining Attorney, Law Office
102 (Thomas V. Shaw, Managing Attorney)

Before Simms, Cissel and Hanak, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Delores J. Mosier, applicant, has appealed from the
final refusals of the Trademark Examining Attorney to
register the mark FINANCIAL STRAIGHT TALK for "videotapes
featuring a series of educational television programs
concerning financial and business issues (pre-recorded)"¹

¹ Application Serial No. 74/709,998, filed August 2, 1995, based
upon use in commerce since September 1, 1988. The word
"FINANCIAL" has been disclaimed.

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and for "cable television production services in the nature of a series of educational television programs concerning financial and business issues."² The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USC §1052(d), on the basis of Registration No. 1,792,544, issued September 14, 1993 (Sections 8 and 15 affidavit filed, not yet accepted), for the mark STRAIGHTTALK for "economic report published in print periodically." The registration issued to The Conference Board, Inc. Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

It is applicant's position that confusion is unlikely because of differences in the marks and in the goods and services. More particularly, applicant argues that the words "straight talk" are "generic, unprotectable" words (brief, 6) which are commonly used in everyday language and in the financial trade. Since the only element in common between the respective marks is the allegedly generic or descriptive term "STRAIGHT TALK," which is slang for truthful information, applicant argues that the registered mark is a weak one which should only be given a narrow scope of protection.

² Application Ser. No. 74/709,999, filed August 2, 1995, based upon use in commerce since September 1, 1988. Applicant has

With respect to the goods and services, applicant argues that registrant's economic reports deal with global economic issues and are available by subscription only. Applicant argues that the consumers of registrant's reports are "sophisticated, insular" readers who have a pre-existing relationship with the publisher. According to applicant, the readers of registrant's reports are, typically, employees of Fortune 500 companies. It is applicant's position that, in view of these circumstances, there is little likelihood of confusion.

The Examining Attorney, on the other hand, argues that there is no evidence of record that the registered term is descriptive, highly suggestive or even frequently used by others. According to the Examining Attorney, considering that the term "FINANCIAL" has been disclaimed in applicant's mark, less weight should be given to that term so that the dominant part of applicant's mark is the words "STRAIGHT TALK," which are almost identical to registrant's mark. In other words, applicant has merely added the word "FINANCIAL" to the registrant's mark, according to the Examining Attorney. The Examining Attorney also argues that it is improper for applicant to collaterally attack the cited registration.

disclaimed the word "FINANCIAL" apart from the mark as show.

Concerning the goods and services, the Examining Attorney argues that goods and services need not be identical or directly competitive; they need only be related in some manner, or that conditions surrounding the marketing of the respective goods or services be such that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from the same source. Here, it is the Examining Attorney's position that the subject matter of the respective goods and services is in the overlapping fields of finance, business and economics. In fact, relying upon a definition of "economic," including "pertaining to one's personal finances," the Examining Attorney argues that economic reports may include financial matters. The Examining Attorney contends that an individual or business interested in financial, business and economic matters may be likely to consult several sources for information, and that applicant and registrant may be competing for the interests of the same groups of people. The Examining Attorney has made of record numerous third-party registrations covering both printed publications, on the one hand, and videotapes or the production of television programs covering the same subject on the other. The Examining Attorney argues, on the basis

of this evidence, that it is common for companies to use the same mark for both television programs (a service mark) and for a printed publication or a taped version thereof.

Upon careful consideration of this record and the arguments of the attorneys, we believe that confusion is likely.

First, as the Examining Attorney contends, there is no evidence that the registered mark "STRAIGHTTALK" is a weak or descriptive one with respect to economic reports. Applicant's mark FINANCIAL STRAIGHT TALK and registrant's mark STRAIGHTTALK have obvious similarities in sound, appearance and meaning, applicant's mark only adding the descriptive term "FINANCIAL." Although applicant has not submitted any evidence in support of its argument that registrant's mark is an inherently weak one in view of the asserted meaning of the term "straight talk" as truthful information, suffice it to say that, even if the registered mark is considered somewhat suggestive of the nature of registrant's economic reports, it nevertheless is entitled to some protection, and that use of a very similar expression in connection with closely related goods or services may be likely to cause confusion.

With respect to the goods, while printed economic reports and videotapes featuring financial and business

issues are obviously specifically different goods, it is our belief that purchasers, aware of registrant's STRAIGHTTALK economic reports who then encounter applicant's FINANCIAL STRAIGHT TALK videotapes concerning financial and business issues are likely to believe that these goods all come from the same source or that the same entity has sponsored or approved the goods. In this regard, we must construe a description of goods in a cited registration as it appears, and the description is not to be limited by any arguments or evidence as to the actual channels of trade of registrant's particular goods--published economic reports. Canadian Imperial Bank of Commerce v. Well Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1816 (Fed. Cir. 1987). In addition to possibly being sent out by registrant directly to members of the general public, these economic reports could also be sent out by, for example, banks and brokerage firms and other companies, to their customers--ordinary members of the general public. These same individuals may also purchase and use videotapes dealing with business and financial issues. An individual, aware of the STRAIGHTTALK economic reports, who then buys or sees a FINANCIAL STRAIGHT TALK videotape dealing with financial and business issues may well believe that these products are both produced by the same entity. If we had

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any doubt about this matter, that doubt must be resolved in favor of the registrant. In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

With respect to the cable television production services in the nature of an educational program concerning financial and business issues, the application notes that the mark is used on the title display screen of television programs, and specimens evidencing such use were submitted with the application. In its brief, applicant refers to the services rendered under this mark as being in the nature of educational television programs. In this regard, the Examining Attorney has made of record some evidence, in the form of third-party registrations, that the same source may produce both printed publications on a particular subject as well as television programs. See In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993). We believe that some of the same class of purchasers exposed to registrant's mark used in connection with economic reports will encounter applicant's mark used in connection with its financial and business programs on television. For example, an investor or bank customer who receives registrant's STRAIGHTTALK economic report who then sees applicant's FINANCIAL STRAIGHT TALK financial and business television program on cable TV is likely, we believe, to

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assume that the economic report and the television program are produced or sponsored by the same company.

Decision: The refusal of registration is affirmed as to both the Class 9 goods and the Class 41 services.

R. L. Simms

R. F. Cissel

E. W Hanak
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

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